to observe them, he will not be held to have assumed risks not obvious to one of his age, experience, and judgment. But this duty applies only to dangers which are known or ought to have been known to the master, and which the servant, on account of his youth or inexperience, is ignorant of, and which he cannot reasonably he expected to discover by the exercise of ordinary care.

9. INSTRUCTIONS—*Lack of evidence to support.* An instruction should not be given when there is no evidence on which to base it.

HUDGINS AND WIFE v. SIMON AND OTHERS.—Decided at Wytheville, June 17, 1897.—*Cardwell*, J:

1. APPEALS AND ERROR—*Two trials—Rule of decision when first verdict set aside.* When there have been two trials in a case and the verdict on the first trial has been set aside and a new trial awarded and the ruling of the court has been excepted to, on a writ of error to a judgment rendered on a verdict on the second trial, the Court of Appeals will first consider the proceedings on the first trial, and if there was error in setting aside the verdict, will disregard the proceedings subsequent to the verdict and enter judgment thereon.

2. BILLS OF EXCEPTION—*At what term to be filed.* Where points are saved during the progress of the trial of an action at law, the formal bills of exceptions may be written out and signed at the term at which the judgment is rendered, although that be after the term at which the verdict was rendered.

3. EVIDENCE—*Book of patents in land office—Colonial records.* Entries in the books of the Register of the Land Office, labelled "Patents," not signed nor having the seal of the colony attached, are not patents, but may be received in evidence as memoranda from the colonial records tending to prove that proceedings had been taken looking to the execution and delivery of a grant, to be followed up, if possible, by evidence tending to prove that such grant was actually executed and delivered.

4. INSTRUCTIONS—*Assuming facts.* An instruction which assumes that a party has connected himself with the Commonwealth by an unbroken chain of title, is erroneous. This is a question of fact for the jury.

5. NEW TRIALS—*Payment of costs of former trial.* After a second trial a plaintiff cannot for the first time object that the order granting the new trial did not require, as a condition precedent, the payment of the costs of the former trial, especially when no motion was made to set aside the order granting the new trial, nor for an execution for the costs of the former trial.

TOWN OF STRASBURG v. WINCHESTER & STRASBURG R. CO. AND OTHERS.—Decided at Wytheville, June 17, 1897.—*Riely*, J:

1. MANDAMUS—*Inability to enforce obedience—Case at bar—Receivers of court.* A mandamus will not be awarded when the court is powerless to make it effectual. In the case at bar the defendant would be financially unable to build the railroad if required. Its railroad is in the hands of another company which is in the hands of receivers of a circuit court of the United States, who are amenable only to the court of their appointment, and no traffic arrangements could be compelled with another independent road, and the writ would be wholly unavailing if awarded.